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10/561,325	12/20/2005	Richard Colin Fitzgerald	356952.00040-US	5691

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EXAMINER
LEIBOVICH, YAIR

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _11/24/2009_.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-26_ is/are pending in the application.

    4a) Of the above claim(s) _23_ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-2, 4-9, 11-13, 15-20, 22, and 24-26_ is/are rejected.

7)☒ Claim(s) _3, 10, 14, and 21_ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _09 July 2008_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All b)☐ Some * c)☐ None of:

      1.☒ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail. Date _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments with respect to claims 1-2, 4-9, 11-13, 15-20, 22, and 24-26 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

2.   Claims 3, 10, 14, and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 101

3.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4.   Claim 26 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter: "computer program product comprising a computer readable medium bearing computer program code" does not fall under the four statutory subject matter categories. It is suggested that storage be added as in canceled claim 23.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

> the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6.   Claims 1, 4-5, 11-12, 15-16, 22, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley (US 2004/0128495 A1) in view of Brundridge (US 6,279,109 B1).

For claim 1,

- Hensley teaches a portable computing device controlled by a single resident operating system (see title and the embodiment of [0027]: the newly created OS with the new configuration), in which, during boot (see figure 3 block 84: during this reboot, newly configured OS for NUSD is single resident), if the single resident operating system is loaded intact (see figure 3 block 84: all specified copied files are good/intact) but an internal non-volatile read/write memory drive that is used to boot the device ... associated with the single resident operating system is found to be corrupted (see [0015] lines 8-10: this is a recovery measure due to a hard drive problem detected earlier as in [0034] line 7), then the non-volatile read/write memory drive is automatically swapped with a temporary volatile RAM drive by the single resident operating system (see figure 3 block 76: using "bootswap.sys" and [0009] ram drive as the NUSD) to thereby enable the single resident operating system to complete the boot (see abstract line 9).

- Hensley does not explicitly teach "to functional GUI" although it is suggested.

- However, Brundridge teaches "to a functional GUI" (see title).

- It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hensley to include "to a functional GUI", as taught by

Brundridge, because both Hensley and Brundridge teach use of RAM drives during boot therefore they are analogous arts; and because windows usually comes with GUI (see column 2 lines 32-36).

For claim 4,

- The combination of Hensley and Brundridge teaches the limitations of claim 1 for the reasons above.

- Brundridge further teaches default configuration files automatically copied to volatile RAM drive (see figure 1 block 120 is volatile and 160 is not).

For claim 5,

- The combination of Hensley and Brundridge teaches the limitations of claim 1 for the reasons above.

- Brundridge further teaches corrupt drive is automatically moved to a different drive letter to allow subsequent reformatting (see figure 3 block 324 and column 3 line 12).

For claim 11,

- The combination of Hensley and Brundridge teaches the limitations of claim 1 for the reasons above.

- Brundridge further teaches the internal non-volatile read/write memory drive is found to be corrupted if any of the following apply: (a) existing data cannot be read; (b) new data cannot be written; (c) user data is corrupt but metadata is not corrupt; (d) user data is not corrupt but metadata is corrupt; (e) it is in a read-only state (see title: many occur if uninstalled/not available).

For Claim 12,

- The claim recites essentially similar limitations as claim 1, except that it is a method.

For Claims 15-16,

- The combination of Hensley and Brundridge teaches the limitations of claim 12 for the reasons above.

- The claims recite essentially similar limitations as in claims 4-5 respectively, except that they are a method.

For Claim 22,

- The combination of Hensley and Brundridge teaches the limitations of claim 12 for the reasons above.

- The claims recite essentially similar limitations as in claim 11, except that it is a method.

For claim 24,

- The combination of Hensley and Brundridge teaches the limitations of claim 1 for the reasons above.

- Brundridge further teaches the corrupt non-volatile read/write memory drive is un-mounted (see abstract line 6), and the temporary volatile RAM drive is mounted (see abstract typically there) having the same drive letter as was allocated to the corrupt non-volatile read/write memory drive (see figure 3 block 324: drive letter is selected).

For Claim 25,

- The combination of Hensley and Brundridge teaches the limitations of claim 1 for the reasons above.

- The claims recite essentially similar limitations as in claim 24, except that it is a method.

For Claim 26,

- The claim recites essentially similar limitations as claim 1, except that it is a computer program product.

7.   Claims 2 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hensley (US 2004/0128495 A1) in view of Brundridge (US 6,279,109 B1), and in further view of Wilks (US 2003/0074550 A1).

For Claim 2,

- The combination of Hensley and Brundridge teaches the limitations of claim 1 for the reasons above.

- The combination of Hensley and Brundridge does not explicitly teach: "non-volatile read/write memory is a flash memory" (although it is suggested).

- However, Wilks teaches non-volatile read/write memory is a flash memory (see figure 1 element 124 and column 6 lines 51-52).

- It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Hensley and Brundridge to include non-volatile read/write memory is a flash memory, as taught by Wilks, because both

Hensley, Brundridge, and Wilks teach use of RAM disk/drives during boot therefore
they are analogous arts; and because flash is widely used as r/w-nv memory (see
figure 1).

For Claim 13,

- The combination of Hensley and Brundridge teaches the limitations of claim 12 for
  the reasons above.

- The claim recites essentially similar limitations as claim 2, except that it is a method.

8.   Claims 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over
the combination of Hensley (US 2004/0128495 A1) in view of Brundridge (US 6,279,109
B1) and further in view of Maffezzoni (US 6,532,535 B1).

For Claim 6,

- The combination of Hensley and Brundridge teaches the limitations of claim 1 for the
  reasons above.

- The combination of Hensley and Brundridge does not explicitly teach device displays
  a user notification asking if reformatting should take place.

- However, Maffezzoni teaches device (column 3 line 40) displays a user notification
  asking (column 43 lines 43-44) if reformatting should take place (Figure 8 step 466,
  and Column 43 lines 44-45).

- It would have been obvious to one of ordinary skill in the art at the time the invention
  was made to modify the combination of Hensley and Brundridge to include device
  displays a user notification asking if reformatting should take place as taught by

Maffezzoni, because both Hensley, Brundridge, and Maffezzoni teaches booting therefore they are analogues arts and because formatting deletes everything, so user should confirm (see Figure 8 step 466).

For Claim 17,

- The combination of Hensley and Brundridge teaches the limitations of claim 12 for the reasons above.

- The claim recites essentially similar limitations as claim 6, except that it is a method.

9.   Claims 7-9 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Hensley (US 2004/0128495 A1) in view of Brundridge (US 6,279,109 B1) and further in view of Duske (US 6,992,991 B2).

For Claim 7,

- The combination of Hensley and Brundridge teaches the limitations of claim 1 for the reasons above.

- The combination of Hensley and Brundridge does not explicitly teach device displays a user notification that the temporary RAM drive is in use.

- However, Duske teaches device displays a user notification that the temporary RAM drive is in use (Column 66 line 35, 53, column 17 lines 55-58, and column 26 lines 24-27).

- It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Hensley and Brundridge to include "device displays a user notification that the temporary RAM drive is in use" as taught by

Duske, because both Hensley, Brundridge, and Duske teaches booting therefore they are analogues arts and because it is common to show resources used to user (see Column 66 line 35, 53, column 17 lines 55-58, and column 26 lines 24-27).

For Claim 8,

- The combination of Hensley and Brundridge teaches the limitations of claim 1 for the reasons above.

- The combination of Hensley and Brundridge does not explicitly teach "device displays ... disabled".

- However, Duske teaches device displays user notification that save options are disabled (Column 28 line 52 and further in column 45 line 38).

- It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Hensley and Brundridge to include "device displays ... disabled" as taught by Duske, because of the motivational reasons specified in claim 7.

For Claim 9,

- The combination of Hensley and Brundridge teaches the limitations of claim 1 for the reasons above.

- The combination of Hensley and Brundridge does not teach "device displays ... not available.

- However, Duske teaches device displays user notification that save options are not available (Column 28 line 52 and further in column 45 line 38).

- It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Hensley and Brundridge to include "device displays ... not available" as taught by Duske, because of the motivational reasons specified in claim 7.

For Claims 18-20,

- The combination of Hensley and Brundridge teaches the limitations of claim 12 for the reasons above.

- The claims recite essentially similar limitations as in claims 7-9 respectively, except that they are a method.

Conclusion

10.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.   Accordingly, **THIS ACTION IS MADE FINAL**.   See MPEP § 706.07(a).   Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action.   In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YAIR LEIBOVICH whose telephone number is (571)270-3796. The examiner can normally be reached on Monday-Thursday 6:30AM to 5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Badderman can be reached on (571)272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott T Baderman/
Supervisory Patent Examiner, Art Unit 2114

Y.L.